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HOUSE BILL 91

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Joanne J. Ferrary and Tara L. Lujan and  
Antoinette Sedillo Lopez

AN ACT

RELATING TO NATURAL RESOURCES; AUTHORIZING THE NATURAL  
RESOURCES TRUSTEE TO BRING SUIT FOR DAMAGES CAUSED BY RELEASE  
OF AN INJURIOUS SUBSTANCE PURSUANT TO THE NATURAL RESOURCES  
TRUSTEE ACT; PROVIDING FOR THE ADOPTION OF RULES FOR THE  
ASSESSMENT AND COLLECTION OF FINES RELATED TO THE RELEASE OF  
PETROLEUM-BASED INJURIOUS SUBSTANCES; PROVIDING LIMITATIONS;  
AMENDING THE NATURAL RESOURCES TRUSTEE FUND; PROVIDING THAT THE  
NATURAL RESOURCES TRUSTEE MAY JOIN A CIVIL ACTION PURSUANT TO  
THE WATER QUALITY ACT, THE AIR QUALITY CONTROL ACT AND THE  
HAZARDOUS WASTE ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-2-12 NMSA 1978 (being Laws 1992,  
Chapter 20, Section 14, as amended) is amended to read:

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1 "74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD

2 CITATIONS.--

3 A. When, on the basis of any information, the  
4 secretary or the director determines that a person has violated  
5 or is violating a requirement or prohibition of the Air Quality  
6 Control Act, a regulation promulgated pursuant to that act or a  
7 condition of a permit issued under that act, the secretary or  
8 the director may:

9 (1) issue a compliance order within one year  
10 after the violation becomes known by the department or the  
11 local agency stating with reasonable specificity the nature of  
12 the violation and requiring compliance immediately or within a  
13 specified time period or assessing a civil penalty for a past  
14 or current violation, or both; or

15 (2) commence a civil action in district court  
16 for appropriate relief, including a temporary or permanent  
17 injunction.

18 B. An order issued pursuant to Subsection A of this  
19 section may include a suspension or revocation of the permit or  
20 portion thereof issued by the secretary or the director that is  
21 alleged to have been violated. Any penalty assessed in the  
22 order shall not exceed fifteen thousand dollars (\$15,000) per  
23 day of noncompliance for each violation.

24 C. An order issued pursuant to Subsection A of this  
25 section shall become final unless, no later than thirty days

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1 after the order is served, the person named therein submits a  
2 written request to the secretary or the director for a public  
3 hearing. Upon such request, the secretary or the director  
4 shall promptly conduct a public hearing. The secretary or the  
5 director shall appoint an independent hearing officer to  
6 preside over the public hearing. The hearing officer shall  
7 make and preserve a complete record of the proceedings and  
8 forward the hearing officer's recommendation based thereon to  
9 the secretary or the director, who shall make the final  
10 decision.

11 D. The environmental improvement board or the local  
12 board may implement a field citation program through  
13 regulations establishing appropriate minor violations for which  
14 field citations assessing civil penalties not to exceed one  
15 thousand dollars (\$1,000) per day of violation may be issued by  
16 officers or employees of the department or the local agency as  
17 designated by the secretary or the director.

18 E. A person to whom a field citation is issued  
19 pursuant to Subsection D of this section may, within a  
20 reasonable time as prescribed by regulation by the  
21 environmental improvement board or the local board, elect to  
22 pay the penalty assessment or to request a hearing by the  
23 issuing agency on the field citation. If a request for hearing  
24 is not made within the time specified in the regulation, the  
25 penalty assessment in the field citation shall be final.

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1           F. Payment of a civil penalty required by a field  
2 citation issued pursuant to Subsection D of this section shall  
3 not be a defense to further enforcement by the department or  
4 the local agency to correct a violation or to assess the  
5 maximum statutory penalty pursuant to other authorities in the  
6 Air Quality Control Act if the violation continues.

7           G. In determining the amount of a penalty to be  
8 assessed pursuant to this section, the secretary, the director  
9 or the person issuing a field citation shall take into account  
10 the seriousness of the violation, any good-faith efforts to  
11 comply with the applicable requirements and other relevant  
12 factors.

13           H. In connection with a proceeding under this  
14 section, the secretary or the director may issue subpoenas for  
15 the attendance and testimony of witnesses and the production of  
16 relevant papers, books and documents and may adopt rules for  
17 discovery procedures.

18           I. If a person fails to comply with an  
19 administrative order, the secretary or director may initiate an  
20 action to suspend or revoke the permit, or portion thereof,  
21 alleged to have been violated or to commence a civil action in  
22 district court to enforce the order, or to suspend or revoke  
23 the permit, or both.

24           J. If a person fails to pay an assessment of a  
25 civil penalty, the secretary or director may commence a civil

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1 action in district court to collect the civil penalties  
2 assessed in the order.

3 K. Penalties collected pursuant to this section  
4 shall be deposited in the:

5 (1) municipal or county general fund, as  
6 applicable, if the administrative order or field citation was  
7 directed to a source located within a local authority; or

8 (2) state general fund if the administrative  
9 order or field citation was directed to any other source.

10 L. The natural resources trustee may join a civil  
11 action for the release of an air contaminant pursuant to the  
12 Natural Resources Trustee Act."

13 SECTION 2. Section 74-4-10 NMSA 1978 (being Laws 1981  
14 (1st S.S.), Chapter 8, Section 9, as amended) is amended to  
15 read:

16 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL  
17 PENALTIES.--

18 A. Whenever on the basis of any information the  
19 secretary determines that any person has violated, is violating  
20 or threatens to violate any requirement of the Hazardous Waste  
21 Act, any rule adopted and promulgated pursuant to that act or  
22 any condition of a permit issued pursuant to that act, the  
23 secretary may:

24 (1) issue a compliance order stating with  
25 reasonable specificity the nature of the violation or

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1 threatened violation and requiring compliance immediately or  
2 within a specified time period or assessing a civil penalty for  
3 any past or current violation, or both; or

4 (2) commence a civil action in district court  
5 for appropriate relief, including a temporary or permanent  
6 injunction.

7 B. Any order issued pursuant to Subsection A of  
8 this section may include a suspension or revocation of any  
9 permit issued by the secretary. Any penalty assessed in the  
10 order shall not exceed ten thousand dollars (\$10,000) per day  
11 of noncompliance for each violation. In assessing the penalty,  
12 the secretary shall take into account the seriousness of the  
13 violation and any good-faith efforts to comply with the  
14 applicable requirements. For violations related to storage  
15 tanks, "per violation" means per tank.

16 C. If a violator fails to take corrective actions  
17 within the time specified in a compliance order, the secretary  
18 may:

19 (1) assess a civil penalty of not more than  
20 twenty-five thousand dollars (\$25,000) for each day of  
21 continued noncompliance with the order; and

22 (2) suspend or revoke any permit issued to the  
23 violator pursuant to the Hazardous Waste Act.

24 D. Whenever on the basis of any information the  
25 secretary determines that the immediate termination of a

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1 research, development and demonstration permit is necessary to  
2 protect human health or the environment, the secretary may  
3 order an immediate termination of all research, development and  
4 demonstration operations permitted pursuant to the Hazardous  
5 Waste Act at the facility.

6 E. Whenever on the basis of any information the  
7 secretary determines that there is or has been a release of  
8 hazardous waste into the environment from a facility authorized  
9 to operate under Section 74-4-9 NMSA 1978, the secretary may  
10 issue an order requiring corrective action, including  
11 corrective action beyond a facility's boundaries or other  
12 response measure as ~~[he]~~ the secretary deems necessary to  
13 protect human health or the environment or may commence an  
14 action in district court in the district in which the facility  
15 is located for appropriate relief, including a temporary or  
16 permanent injunction.

17 F. Any order issued under Subsection E of this  
18 section may include a suspension or revocation of authorization  
19 to operate under Section 74-4-9 NMSA 1978 and shall state with  
20 reasonable specificity the nature of the required corrective  
21 action or other response measure and shall specify a time for  
22 compliance. If any person named in an order fails to comply  
23 with the order, the secretary may assess, and the person shall  
24 be liable to the state for, a civil penalty in an amount not to  
25 exceed ten thousand dollars (\$10,000) for each day of

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1 noncompliance with the order.

2 G. Any order issued pursuant to this section, any  
3 other enforcement proceeding initiated pursuant to this section  
4 or any claim for personal or property injury arising from any  
5 conduct for which evidence of financial responsibility must be  
6 provided may be issued to or taken against the insurer or  
7 guarantor of an owner or operator of a treatment, storage or  
8 disposal facility or storage tank if:

9 (1) the owner or operator is in bankruptcy,  
10 reorganization or arrangement pursuant to the federal  
11 Bankruptcy Code; or

12 (2) jurisdiction in any state or federal court  
13 cannot with reasonable diligence be obtained over an owner or  
14 operator likely to be solvent at the time of judgment.

15 H. Any order issued pursuant to this section shall  
16 become final unless, no later than thirty days after the order  
17 is served, the person named in the order submits a written  
18 request to the secretary for a public hearing. Upon such  
19 request, the secretary shall promptly conduct a public hearing.  
20 The secretary shall appoint an independent hearing officer to  
21 preside over the public hearing. The hearing officer shall  
22 make and preserve a complete record of the proceedings and  
23 forward ~~[his]~~ a recommendation based on the record to the  
24 secretary, who shall make the final decision.

25 I. In connection with any proceeding under this

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1 section, the secretary may issue subpoenas for the attendance  
2 and testimony of witnesses and the production of relevant  
3 papers, books and documents and may promulgate rules for  
4 discovery procedures.

5 J. Penalties collected pursuant to an  
6 administrative order shall be deposited in the state treasury  
7 to be credited to the hazardous waste emergency fund.

8 K. The natural resources trustee may join a civil  
9 action for the release of a hazardous waste pursuant to the  
10 Natural Resources Trustee Act."

11 SECTION 3. Section 74-6-10 NMSA 1978 (being Laws 1967,  
12 Chapter 190, Section 9, as amended) is amended to read:

13 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--  
14 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

15 A. Whenever, on the basis of any information, a  
16 constituent agency determines that a person violated or is  
17 violating a requirement, regulation or water quality standard  
18 adopted pursuant to the Water Quality Act or a condition of a  
19 permit issued pursuant to that act, the constituent agency may:

20 (1) issue a compliance order requiring  
21 compliance immediately or within a specified time period or  
22 issue a compliance order assessing a civil penalty, or both; or

23 (2) commence a civil action in district court  
24 for appropriate relief, including injunctive relief.

25 B. A compliance order issued pursuant to Paragraph  
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1 (1) of Subsection A of this section may include a suspension or  
2 termination of the permit allegedly violated.

3 C. A compliance order shall state with reasonable  
4 specificity the nature of the violation. Any penalty assessed  
5 in the compliance order shall not exceed:

6 (1) fifteen thousand dollars (\$15,000) per day  
7 of noncompliance with the provisions in Section 74-6-5 NMSA  
8 1978, including a regulation adopted or a permit issued  
9 pursuant to that section; or

10 (2) ten thousand dollars (\$10,000) per day for  
11 each violation of a provision of the Water Quality Act other  
12 than the provisions in Section 74-6-5 NMSA 1978 or of a  
13 regulation or water quality standard adopted pursuant to the  
14 Water Quality Act.

15 D. In assessing a penalty authorized by this  
16 section, the constituent agency shall take into account the  
17 seriousness of the violation, any good faith efforts to comply  
18 with the applicable requirements and other relevant factors.

19 E. For purposes of this section, a single  
20 operational event that leads to simultaneous violations of more  
21 than one standard shall be treated as a single violation.

22 F. If a person fails to take corrective actions  
23 within the time specified in a compliance order, the  
24 constituent agency may:

25 (1) assess a civil penalty of not more than

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1 twenty-five thousand dollars (\$25,000) for each day of  
2 continued noncompliance with the compliance order; and

3 (2) suspend or terminate the permit violated  
4 by the person.

5 G. ~~[Any]~~ A compliance order issued by a constituent  
6 agency pursuant to this section shall become final unless, no  
7 later than thirty days after the compliance order is served,  
8 ~~[any]~~ a person named in the compliance order submits a written  
9 request to the commission for a public hearing. The commission  
10 shall conduct a public hearing within ninety days after receipt  
11 of a request.

12 H. The commission may appoint an independent  
13 hearing officer to preside over ~~[any]~~ a public hearing held  
14 pursuant to Subsection ~~[F]~~ G of this section. The hearing  
15 officer shall:

16 (1) make and preserve a complete record of the  
17 proceedings; and

18 (2) forward to the commission a report that  
19 includes recommendations if recommendations are requested by  
20 the commission.

21 I. The commission shall consider the findings of  
22 the independent hearing officer, and based on the evidence  
23 presented at the hearing, the commission shall make a final  
24 decision regarding the compliance order.

25 J. In connection with any proceeding ~~[under]~~

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1 provided for in this section, the commission may:

- 2 (1) adopt rules for discovery procedures; and  
3 (2) issue subpoenas for the attendance and  
4 testimony of witnesses and for relevant papers, books and  
5 documents.

6 K. Penalties collected pursuant to this section  
7 shall be deposited in the general fund.

8 L. As an additional means of enforcing the Water  
9 Quality Act or any regulation or standard of the commission,  
10 the commission may accept an assurance of discontinuance of any  
11 act or practice deemed in violation of the Water Quality Act,  
12 or any regulation or standard adopted pursuant to that act,  
13 from any person engaging in, or who has engaged in, such act or  
14 practice, signed and acknowledged by the [~~chairman~~] chair of  
15 the commission and the party affected. Any such assurance  
16 shall specify a time limit during which the discontinuance is  
17 to be accomplished.

18 M. The natural resources trustee may join a civil  
19 action for the release of a water contaminant pursuant to the  
20 Natural Resources Trustee Act."

21 SECTION 4. A new section of the Natural Resources Trustee  
22 Act is enacted to read:

23 "[NEW MATERIAL] LEGISLATIVE FINDINGS.--The legislature  
24 finds that:

- 25 A. the people of the state, including future

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1 generations, have the right to a clean and healthy environment,  
2 including pure water, clean air, healthy ecosystems and a  
3 stable climate and to the preservation of the natural,  
4 cultural, scenic and healthful qualities of the environment;

5 B. the natural resources of the state are assets  
6 held in trust for the benefit of the people of the state,  
7 including future generations;

8 C. the protection and preservation of natural  
9 resources promote the well-being of the people of this state,  
10 including future generations; and

11 D. the release of injurious substances into the  
12 environment constitutes a threat to natural resources and the  
13 well-being of the people of this state."

14 SECTION 5. A new section of the Natural Resources Trustee  
15 Act is enacted to read:

16 "[NEW MATERIAL] DEFINITIONS.--As used in the Natural  
17 Resources Trustee Act:

18 A. "assessment costs" means the costs of  
19 restoration and the costs of collecting, compiling and  
20 analyzing information, statistics or data to determine damages  
21 for injuries to natural resources;

22 B. "facility" means:

23 (1) a building, structure, installation,  
24 equipment, pipe or pipeline, including a pipe into a sewer or  
25 publicly owned treatment works, well, pit, pond, lagoon,

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1 impoundment, ditch, landfill, storage container, motor vehicle,  
2 rolling stock or aircraft; or

3 (2) a site or area where an injurious  
4 substance has been deposited, stored, disposed of, placed or  
5 otherwise come to be located;

6 C. "injurious substance" includes:

7 (1) an air contaminant substance, including  
8 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,  
9 vapor, microorganisms, radioactive material, any combination  
10 thereof or any decay or reaction product thereof;

11 (2) a hazardous waste substance, including any  
12 solid waste or combination of solid wastes that because of  
13 their quantity, concentration or physical, chemical or  
14 infectious characteristics may:

15 (a) cause or significantly contribute to  
16 an increase in mortality or an increase in serious irreversible  
17 or incapacitating reversible illness; or

18 (b) pose a substantial present or  
19 potential hazard to human health or the environment when  
20 improperly treated, stored, transported, disposed of or  
21 otherwise managed;

22 (3) a substance listed by the federal  
23 environmental protection agency in:

24 (a) 40 C.F.R., Part 261, Subpart D;

25 (b) 40 C.F.R., Part 261, Appendix VIII;

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1 or

2 (c) 40 C.F.R., Part 264, Appendix IX;

3 (4) a solid waste or combination of solid  
4 wastes that:

5 (a) exceeds the toxicity characteristics  
6 listed by the federal environmental protection agency in Table  
7 1 of 40 C.F.R. 261.24; or

8 (b) because of quantity, concentration  
9 or physical, chemical or infectious characteristics may: 1)  
10 cause or significantly contribute to an increase in mortality  
11 or an increase in serious irreversible or incapacitating  
12 reversible illness; or 2) pose a substantial present or  
13 potential hazard to human health or the environment when  
14 improperly treated, stored, transported, disposed of or  
15 otherwise managed;

16 (5) a water contaminant substance, including  
17 any substance that could alter, if discharged or spilled, the  
18 physical, chemical, biological or radiological qualities of  
19 water, but does not include a source, special nuclear or  
20 byproduct material as defined by the federal Atomic Energy Act  
21 of 1954;

22 (6) a petroleum product, including gasoline,  
23 crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil  
24 sludge or refuse, or a petroleum-related product or waste  
25 fraction of the product or waste that is liquid at standard

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1 conditions of temperature and pressure;

2 (7) per- and polyfluoroalkyl substances,  
3 including their salts and structural isomers; and

4 (8) any other substance that, based on its  
5 toxicity, persistence and degradability in nature; its  
6 potential for accumulation in tissue; and other related factors  
7 such as flammability, corrosiveness or other injurious  
8 characteristic, is injurious to natural resources;

9 D. "natural resources" includes land; minerals;  
10 soils; sediments; geologic resources; air; surface waters;  
11 ground waters; drinking water supplies; aquifers; perennial,  
12 seasonal and ephemeral drainage; arroyos; watersheds; biota;  
13 fish; wildlife; supporting habitats; and vegetation; and

14 E. "restoration" means the actions necessary to  
15 return an injured natural resource to baseline condition as  
16 measured in terms of the injured natural resource's physical,  
17 chemical or biological properties and the services it  
18 previously provided."

19 SECTION 6. Section 75-7-2 NMSA 1978 (being Laws 1993,  
20 Chapter 292, Section 2, as amended) is amended to read:

21 "75-7-2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL  
22 RESOURCES TRUSTEE.--

23 A. The "natural resources trustee" is created. The  
24 trustee is appointed by and serves at the pleasure of the  
25 governor pursuant to the provisions of:

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1                   (1) the Natural Resources Trustee Act and  
2 other applicable state law; and

3                   (2) the federal Comprehensive Environmental  
4 Response, Compensation, and Liability Act of 1980, as amended  
5 by the federal Superfund Amendments and Reauthorization Act of  
6 1986, the Federal Water Pollution Control Act and any other  
7 applicable federal law.

8                   B. The natural resources trustee shall act on  
9 behalf of the public as trustee of natural resources within the  
10 state or belonging to, managed by, controlled by or  
11 appertaining to the state, including protecting and  
12 representing the state's interest under applicable state and  
13 federal laws regarding injury to, destruction of or loss of  
14 natural resources in the state.

15                   [~~B.~~] C. The "office of natural resources trustee"  
16 is created. The office shall be administratively attached to  
17 the department of environment. The administrative head of the  
18 office of natural resources trustee is the natural resources  
19 trustee. [~~For purposes of this subsection, the term~~  
20 "~~administratively attached~~" means the same as specified in  
21 ~~Section 9-1-7 NMSA 1978.~~]"

22                   SECTION 7. Section 75-7-3 NMSA 1978 (being Laws 1993,  
23 Chapter 292, Section 3, as amended) is amended to read:

24                   "75-7-3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

25                   A. The natural resources trustee shall take all

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1 actions necessary to carry out the responsibilities of the  
2 natural resources trustee as provided in the federal  
3 Comprehensive Environmental Response, Compensation, and  
4 Liability Act of 1980, as amended by the Superfund Amendments  
5 and Reauthorization Act of 1986, the Federal Water Pollution  
6 Control Act and any other applicable federal law, including the  
7 responsibility to:

8 (1) act on behalf of the public to protect New  
9 Mexico's natural resources by recovering damages for injury to,  
10 destruction of or loss of those resources, including for past  
11 releases with a continuing and present injury to natural  
12 resources;

13 (2) investigate injury to, destruction of or  
14 loss of natural resources;

15 (3) determine the amount and cause of injury  
16 to, destruction of or loss of natural resources;

17 (4) determine the liability of any person for  
18 injury to, destruction of or loss of natural resources;

19 (5) adopt and enforce rules for the assessment  
20 and collection of fines for natural resources damages resulting  
21 from the release of petroleum-based injurious substances;

22 [~~5~~] (6) assess and collect damages for  
23 injury to, destruction of or loss of natural resources,  
24 including bringing legal actions and collecting the costs of  
25 assessing and collecting the damages; and

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1                    [~~6~~] (7) expend money for the purposes set  
2 forth in the Natural Resources Trustee Act.

3                    B. The natural resources trustee may, in accordance  
4 with the State Rules Act, adopt and enforce rules for the  
5 assessment and collection of fines for natural resources  
6 damages resulting from the release of petroleum-based injurious  
7 substances. A person who is or may be affected by a rule  
8 adopted pursuant to this section may file direct appeal to the  
9 New Mexico court of appeals in the manner provided by law.

10                    [~~B.~~] C. The natural resources trustee may:

11                                (1) hire staff, in accordance with the  
12 Personnel Act, to carry out the provisions of the Natural  
13 Resources Trustee Act;

14                                (2) contract with economists, consultants and  
15 other experts; and

16                                (3) accept gifts and grants to carry out the  
17 provisions of the Natural Resources Trustee Act. Gifts and  
18 grants accepted by the natural resources trustee shall be  
19 deposited in the natural resources trustee fund.

20                    [~~C.~~] D. The attorney general shall provide legal  
21 counsel and representation to the natural resources trustee and  
22 the office of [~~the~~] natural resources trustee."

23                    SECTION 8. Section 75-7-4 NMSA 1978 (being Laws 1993,  
24 Chapter 292, Section 4) is amended to read:

25                    "75-7-4. NATURAL RESOURCES DAMAGE--LIABILITY--AWARDS FOR  
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1 DAMAGES.-- ~~[Awards for damage to natural resources in the state~~  
2 ~~shall consist of those amounts calculated in accordance with~~  
3 ~~federal law, including:~~

4 ~~A. The cost of restoration, replacement or~~  
5 ~~acquisition of equivalent resources, plus compensation for the~~  
6 ~~loss of use or enjoyment of the natural resources; and~~

7 ~~B. Compensation for the state's expenses in~~  
8 ~~investigating, assessing and collecting damages and enforcing~~  
9 ~~the state's rights.]~~

10 A. The natural resources trustee may bring a suit  
11 on behalf of the state for damages caused by a release of an  
12 injurious substance pursuant to the provisions of the Natural  
13 Resources Trustee Act.

14 B. Before initiating a suit under this section, the  
15 natural resources trustee shall make reasonable efforts to  
16 conduct a cooperative assessment of the nature and extent of  
17 the damages and of methods to achieve resolution of the natural  
18 resources trustee's claim in cooperation with the responsible  
19 party and, upon initiating suit, shall certify that, in the  
20 natural resources trustee's judgment, the efforts have not  
21 succeeded in resolving the claim.

22 C. Venue for a claim brought under this section  
23 shall be in the district court for Santa Fe county or in the  
24 district court for a county in which damages were sustained.

25 D. Except as provided in Subsection F of this

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1 section, with respect to a facility from which there is an  
2 intentional or unintentional release of an injurious substance  
3 into the environment, including a release within the facility,  
4 the following persons shall be jointly and severally liable for  
5 all damages resulting from the release:

6 (1) the owner or operator of the facility at  
7 the time of the release;

8 (2) a person who previously owned or operated  
9 the facility during a time in which the injurious substance was  
10 released, placed, disposed of or treated;

11 (3) a person who by agreement or otherwise  
12 arranged for release, placement, disposal or treatment of the  
13 injurious substance at the facility or arranged with a  
14 transporter for transport of the injurious substance to or from  
15 the facility whether or not the injurious substance was owned  
16 or possessed by the person; and

17 (4) a person who accepted the injurious  
18 substance for transport to a disposal or treatment facility or  
19 site selected by that person.

20 E. Damages owed to the state under this section  
21 include:

22 (1) damages for injury to natural resources,  
23 including the destruction or loss of natural resources;

24 (2) interim losses incurred after the release  
25 and before the completion of restoration;

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1                   (3) residual losses remaining after completion  
2 of restoration of the natural resources; and

3                   (4) the reasonable costs of assessing the  
4 injury resulting from the release and implementing restoration  
5 activities.

6                   F. Damages owed to the state under this section may  
7 be recovered regardless of prospective or ongoing remediation  
8 efforts; provided that the expected results of the remediation  
9 are sufficiently understood to enable the calculation of  
10 damages."

11                   SECTION 9. A new section of the Natural Resources Trustee  
12 Act is enacted to read:

13                   "[NEW MATERIAL] LIMITATION ON ACTIONS.--A claim for  
14 damages under the Natural Resources Trustee Act shall be  
15 brought no later than five years after the date that the  
16 natural resources trustee became aware of the nature and extent  
17 of the injury."

18                   SECTION 10. Section 75-7-5 NMSA 1978 (being Laws 1993,  
19 Chapter 292, Section 5, as amended) is amended to read:

20                   "75-7-5. NATURAL RESOURCES TRUSTEE FUND.--

21                   A. The "natural resources trustee fund" is created  
22 in the state treasury. Money appropriated to the fund or  
23 accruing to it through gifts, grants, fees, penalties, bequests  
24 or any other source shall be delivered to the state treasurer  
25 and deposited in the fund. Money recovered for the state by or

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1 on behalf of the natural resources trustee shall be deposited  
2 in the natural resources trustee fund. The fund shall be  
3 administered by the natural resources trustee as a separate  
4 account and may consist of subaccounts that the natural  
5 resources trustee deems necessary to carry out the purposes of  
6 the fund. Disbursements from the fund shall be made upon  
7 warrants drawn by the secretary of finance and administration  
8 pursuant to vouchers signed by the natural resources trustee or  
9 the trustee's designated representative. Money in the fund  
10 shall not revert to the general fund at the end of a fiscal  
11 year.

12 B. Pursuant to the following criteria, money in the  
13 natural resources trustee fund shall be used to carry out the  
14 provisions of the Natural Resources Trustee Act by restoring,  
15 replacing or acquiring natural resources [~~in an area where~~  
16 ~~natural resources have been injured, destroyed or lost,~~  
17 ~~provided that money deposited in the fund because of injury to,~~  
18 ~~destruction of or loss of natural resources in an area shall be~~  
19 ~~disbursed to restore, replace or acquire natural resources in~~  
20 ~~that same area~~]:

21 (1) if an expenditure from the fund is  
22 necessary to comply with a court order or court-approved  
23 settlement or to match federal funds, then, pursuant to  
24 Sections 6-3-23 through 6-3-25 NMSA 1978, the natural resources  
25 trustee may request a budget increase and, if approved, the

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1 amount of the expenditure is appropriated;

2 (2) ~~[if money is received for reimbursement of~~  
3 ~~assessment costs, then the natural resources trustee may expend~~  
4 ~~money for injury assessment, and money is appropriated in that~~  
5 ~~amount for that purpose; and] money received for past or future~~  
6 ~~assessment costs shall be placed in an assessment costs~~  
7 ~~subaccount and is appropriated for that purpose;~~

8 (3) money deposited in the fund from injury  
9 to, destruction of or loss of natural resources in an area  
10 shall only be expended to restore, replace or acquire natural  
11 resources in that same area; provided that the natural  
12 resources trustee may undertake a restoration action outside  
13 the area where the natural resources were injured, destroyed or  
14 lost if, in the natural resources trustee's judgment, action  
15 within the area would be infeasible or ineffective;

16 (4) money deposited in the fund from injury,  
17 destruction of or loss of natural resources in an area shall  
18 only be expended to restore, replace or acquire natural  
19 resources; and

20 ~~(3)~~ (5) any other expenditures from the fund  
21 shall be made only pursuant to appropriation by the  
22 legislature.

23 C. In addition to expenditures made pursuant to  
24 Subsection B of this section, money shall be appropriated  
25 annually by the legislature from the general fund for the

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underscoring = new  
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1 purpose of providing for necessary personnel and other costs of  
2 the natural resources trustee, the attorney general and the  
3 office of natural resources trustee in carrying out the  
4 provisions of the Natural Resources Trustee Act, including the  
5 cost of investigation, assessment, collection or enforcement.

6 ~~[D. For purposes of this section, "assessment~~  
7 ~~costs" means the costs of restoration and the costs of~~  
8 ~~collecting, compiling and analyzing information, statistics or~~  
9 ~~data to determine damages for injuries to natural resources~~  
10 ~~pursuant to the Natural Resources Trustee Act.~~

11 ~~E.]~~ D. Money in the natural resources trustee fund  
12 shall be invested as other state funds are invested, and  
13 interest and earnings from the fund shall not revert to the  
14 general fund but shall be credited to the natural resources  
15 trustee fund."

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